47 So. 942, 944. There is no inconsistency in the remedies which the plaintiffs here are pursuing. It is true that in suing Beilin they acknowledge that he has title. But this does not necessarily involve an admission that the defendants' delivery in violation of instructions was not a breach of duty. *Cf. Pacific Vinegar & Pickle Works* v. *Smith*, 152 Cal. 507, 93 Pac. 85; *Robinson Machine Works* v. *Vorse*, 52 Iowa, 207, 2 N. W. 1108. An erroneous application of the doctrine of election is particularly to be regretted, because the doctrine, at best, is a sacrifice of justice to technical perfection. See Charles P. Hine, "Election of Remedies, A Criticism," 26 HARV. L. REV. 707.

EMINENT DOMAIN — POWER OF ONE STATE TO CONDEMN LAND IN ANOTHER. — The plaintiff was a Wisconsin corporation supplying the defendant city in Wisconsin with water. A small but highly important part of its plant was land and an intake main in Minnesota, in which state, however, it performed no public service. Its franchises were held under a Wisconsin statute which gave to any municipality the right to acquire by condemnation any such public utility. The plaintiff sues to enjoin such condemnation proceedings by the defendant in so far as they relate to the property in Minnesota. *Held*, that a demurrer to the complaint be sustained. *Superior Water, etc. Co.* v. *City of Superior*, 183 N. W. 254 (Wis.).

It is true that the United States may condemn land within a state. *Kohl* v. *United States*, 91 U. S. 367. But no state can condemn property in another state. *Crosby* v. *Hanover*, 36 N. H. 404. See NICHOLS, EMINENT DOMAIN, 2 ed., § 28. Nor could Minnesota have allowed the defendant to take the property involved in this case by eminent domain. for a state may not authorize condemnation for purposes which do not substantially benefit its own public interest and welfare. *Grover Irr. & Land Co.* v. *Lovella Ditch, etc. Co.*, 21 Wyo. 204, 131 Pac. 43. *Cf. Gilmer* v. *Lime Point*, 18 Cal. 229; *Trombley* v. *Humphrey*, 23 Mich. 471; *Petition of United States*, 96 N. Y. 227. See Charles N. Gregory, "Expropriation by International Arbitration," 21 HARV. L. REV. 23, 26–27. Under the above authorities, the first ground of decision in the principal case is clearly wrong. It is argued that the property devoted to the franchise is merged in it, is personalty, and therefore is subject to the jurisdiction of Wisconsin. It may be that the whole plant and franchise is properly taxable as a unit and as personalty. *Town of Washburn* v. *Washburn Waterworks Co.*, 120 Wis. 575, 98 N. W. 539. And even that the foreign land may be included for this purpose. *Cf. Vanuxem's Estate*, 212 Pa. St. 315, 61 Atl. 876. But such a fiction is flagrantly abused if by means of it a court claims jurisdiction to operate *in rem* on land in another state. See *Lynde* v. *Columbus, etc. Ry. Co.*, 57 Fed. 993 (Circ. Ct., D. Ind.). If the principal case can be supported, it must be on the second ground of the court's decision: that the acceptance of the franchise under the statute gave rise to a specifically enforceable contract to convey in aid of condemnation proceedings all property devoted to the franchise.

EQUITY — SPECIFIC PERFORMANCE — FRAUD OF A THIRD PARTY AS A DEFENSE. — Through the fraudulent representations of the defendants' agent as to collateral facts, the defendants were induced to agree to sell land to the plaintiff for less than its then market value. The plaintiff was wholly innocent. But the defendants notified him as soon as they discovered the fraud, and tendered him back the sum already paid on account. This the plaintiff refused and brought this bill for specific performance. *Held*, that the bill be dismissed. *Levin* v. *Atchison*, 69 PITTS. L. J. 385.

There is little direct authority upon the point, although the holding of the case has been predicted by an eminent author. See FRY, SPECIFIC PERFORMANCE, 4 ed., §§ 728, 729. A contract cannot be set aside for the fraud